

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

FEB 23 2006

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY AK DEPUTY CLERK

LAUREN BROWNING,

Plaintiff,

vs.

SOUTHWEST RESEARCH
INSTITUTE,

Defendant.

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§
§
§

CIVIL ACTION NO. SA-05-CA-0245-FB

**PLAINTIFF'S APPENDIX IN SUPPORT OF HER MOTION TO EXTEND
PLAINTIFF'S DEADLINE FOR DESIGNATING TESTIFYING EXPERTS**

TO THE HONORABLE FRED BIERY, U.S. DISTRICT JUDGE

Pursuant to Local Rule CV-7(b), Plaintiff Lauren Browning submits the following Appendix
in Support of Her Motion to Extend Plaintiff's Deadline for Designating Testifying Experts.

Respectfully submitted,

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.
3402 Oak Grove Avenue, Suite 200
Dallas, Texas 75204
Phone: (214) 720-2009
Fax: (214) 720-2291

By:

AK

Hal K. Gillespie
State Bar No. 07925500
M. Jeanette Fedele
State Bar No. 24040887

25

BARON AND BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
Phone: (214) 521-3605
Fax: (214) 520-1181
Steve Baughman Jensen
State Bar No. 00783615

TRIAL LAWYERS FOR PUBLIC JUSTICE, P.C.
1717 Massachusetts Avenue, NW, Suite 800
Washington, D.C. 20036
Phone (202) 797-8600
Fax (202) 232-7203
Adele P. Kimmel
District of Columbia Bar No. 412612

LAW OFFICES OF GAUL AND DUMONT
111 Soledad, Suite 725
San Antonio, Texas 78205
(210) 225-0685
(210) 271-9557 - Fax
Malinda A. Gaul
State Bar #08239800

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was forwarded on this the 22nd day of February, in the following manner to:

Cynthia Michelle Benedict
Stephen J. Romero
Fulbright & Jaworski
300 Convent Street, #2200
San Antonio, TX 78205

☒ Hand-Delivery
☒ U.S. Mail, postage pre-paid
☐ Certified Mail, Return Receipt Requested
☐ Overnight Express Mail/Federal Express
☐ Telecopier



M. Jeannette Fedele

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Letter to M. Jeanette Fedele from Cyndi Benedict dated February 17, 2006	APP 0014 - APP 0015
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CONFIDENTIAL INFORMATION

FILED UNDER SEAL

APPENDIX 1-6

jfedele@grwlawfirm.com

From: Williams, Kathy [kwilliams@fulbright.com]
Sent: Tuesday, February 14, 2006 3:42 PM
To: jfedele@grwlawfirm.com
Cc: Benedict, Cyndi
Subject: Browning v SwRI

Jeanette: as a follow up to my voice message, we have no problem extending the expert designation deadlines that we discussed as follows:
Pl's expert designations were March 3 and will now be March 17; Def's expert designations were April 3 and will now be April 17th. If you would be so kind as to send us a Rule 11 agreement to this affect we would appreciate it.

Kathy S. Williams
Sr. Paralegal to Cyndi M. Benedict
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792
Telephone: 210-270-7157
Telecopier: 210-270-7205
email: kwilliams@fulbright.com
www.fulbright.com

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
300 CONVENT STREET, SUITE 2200
SAN ANTONIO, TEXAS 78205-3792
WWW.FULBRIGHT.COM

CYNDI M. BENEDICT
PARTNER
CBENEDICT@FULBRIGHT.COM

DIRECT DIAL: (210) 270-7120
TELEPHONE: (210) 224-5575
FACSIMILE: (210) 270-7205

February 16, 2006

VIA FACSIMILE AND REGULAR MAIL

Ms. M. Jeanette Fedele
Gillespie, Rozen, Watsky, Motley & Jones, P.C.
3402 Oak Grove Avenue, Suite 200
Dallas, Texas 78504

Re: Civil Action No. SA-05-CA-0245-FB; *Lauren Browning v. Southwest Research Institute*; In the United States District Court, Western District of Texas,
San Antonio, Division

Dear Ms. Fedele:

I cannot sign the "Rule 11" letter agreement which you faxed to my office yesterday. Yes, my client and I are agreeable to your request that Plaintiff's deadline to designate testifying experts be moved to March 17, 2006 and Defendant's deadline for same be extended to April 17, 2006. This agreement is not, however, in any manner, as you suggest, tied to an "understanding that the supplemental document production Plaintiff has requested from Defendant will be available to Plaintiff on February 17, 2006." No such commitment has been made to Plaintiff. These are two separate issues and each will be dealt with accordingly.


If it is still your request that Defendant agree to an extension to March 17, 2006 for Plaintiff's deadline to designate testifying experts and an extension to April 17, 2006 for Defendant's correlating deadline, Defendant will agree and will sign a Rule 11 to that effect. However, the conditions which your attempt to place on our agreement to your request are not part of the agreement and are not acceptable to Defendant.

If you would like revise your requested Rule 11, please do so and I will sign if in accord with the above explanation.

APP 0009

Ms. M. Jeanette Fedele
February 16, 2006
Page 2

Very truly yours,


Cyndi M. Benedict

CMB/eai

cc: Malinda A. Gaul
Law Offices of Gaul and Dumont
111 Soledad, Suite 725
San Antonio, Texas 78205

APP 0010

jfedele@grwlawfirm.com

From: jfedele@grwlawfirm.com
Sent: Thursday, February 16, 2006 6:20 PM
To: 'Benedict, Cyndi'
Cc: 'Williams, Kathy'; 'Hal K. Gillespie'
Subject: Browning: Rule 11 agreement

Attachments: Benedict Letter 2-15-06.pdf



Benedict Letter
2-15-06.pdf (1...

Dear Ms. Benedict:

I am disappointed to receive your letter today stating you are unable to sign the Rule 11 letter agreement I faxed to you on February 15, 2006 (attached). The letter I faxed to you reflected exactly the agreement I proposed to you via your paralegal Kathy Williams.

I am willing to prepare a new Rule 11 letter agreement reflecting your counter- offer agreeing simply to extend Plaintiff's deadline to designate testifying experts to March 17, 2006 and Defendant's deadline for same to April 17, 2006. However, as I mentioned to Ms. Williams on the phone, unless Defendant produces the requested supplemental discovery responses by or very near February 17, 2006, I will have no alternative but to move the court to extend Plaintiff's deadline to designate testifying experts to a date beyond March 17, 2006. The length of the extension sought would be appropriately related to the date by which we receive Defendant's supplemental discovery responses. This is necessary to allow experts adequate time to prepare a report.

Very truly yours,

M. Jeanette Fedele
Gillespie, Rozen, Watsky, Motley, & Jones, P.C.
3402 Oak Grove Avenue, Suite 200
Dallas, Texas 75204
214-720-2009 office
214-720-2291 fax
jfedele@grwlawfirm.com

APP 0011

LAW OFFICES OF
GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE
SUITE 200
DALLAS, TEXAS 75204
DALLAS (214) 720-2009
METRO. (972) 988-3357
FAX (214) 720-2291
866 302 LEGAL

February 15, 2006

Hal K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drazin
Joseph H. Gillespie
Karla S. Jackson
Christopher L. Green
M. Jeanette Fedele
James D. Sanford

* Board Certified Labor and Employment Law
Texas Board of Legal Specialization

Via Facsimile - (210) 270-7205

Cynthia M. Benedict
Fulbright & Jaworski
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

***Re: Lauren Browning vs. Southwest Research Institute
Civil Action No. SA-05-CA-0245-XR***

Dear Ms. Benedict:

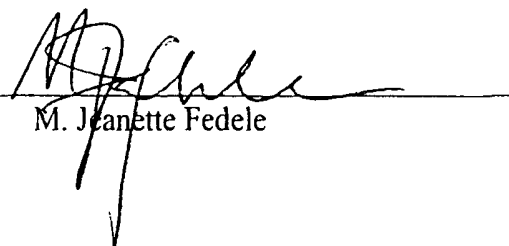
It is my understanding that you are agreeable to moving Plaintiff's deadline to designate testifying experts to March 17, 2006 and Defendant's deadline for same to April 17, 2006. This agreement is based on the understanding that the supplemental document production Plaintiff has requested from Defendant will be available to Plaintiff on February 17, 2006. Plaintiff reserves the right to seek further extension of this deadline should a move to compel Defendant's production become necessary.

If this matches your understanding of our agreement, please indicate by your signature below.

Thank you for your courtesies.

Very truly yours,

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

By: 
M. Jeanette Fedele

MJF:ps

AGREED TO:

Cynthia M. Benedict

APP 0012

Cynthia M. Benedict
February 15, 2006
Page Two

cc: Hal K. Gillespie

Steve Baughman Jensen (Via E-Mail)
Adele P. Kimmel (Via E-Mail)
Malinda A. Gaul (Via E-Mail)

FAX-FEB0303

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

300 CONVENT STREET, SUITE 2200

SAN ANTONIO, TEXAS 78205-3792

WWW.FULBRIGHT.COM

06 FEB 17 PM 2:03

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DATE: February 17, 2006

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Ms. M. Jeanette Fedele Gillespie, Rozen, Watsky, Motley & Jones, P.C.	(214) 720-2291	(214) 720-2009
Malinda Gaul Gaul and Dumont	(210) 271-9557	(210) 225-0685

FROM: Cyndi M. Benedict

FLOOR: 2218

PHONE: (210) 270-7120

FAX: (210) 270-7205

RE: Browning v. SwRI

NUMBER OF PAGES INCLUDING COVER PAGE: 2

MESSAGE:

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APP 0014

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SAN ANTONIO, TEXAS 78205-3792
WWW.FULBRIGHT.COM

CYNDI M. BENEDICT
PARTNER
CBENEDICT@FULBRIGHT.COM

DIRECT DIAL: (210) 270-7120
TELEPHONE: (210) 224-8575
FACSIMILE: (210) 270-7206

February 17, 2006

**VIA FACSIMILE
AND U.S. MAIL**

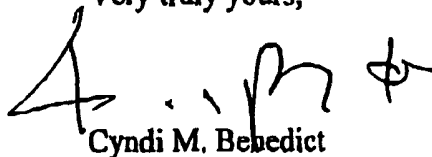
Ms. M. Jeanette Fedele
Gillespie, Rozen, Watsky, Motley & Jones, P.C.
3402 Oak Grove Avenue, Suite 200
Dallas, Texas 78504

Re: Civil Action No. SA-05-CA-0245-FB; *Lauren Browning v. Southwest Research Institute*; In the United States District Court, Western District of Texas,
San Antonio, Division

Dear Ms. Fedele:

We have a fundamental disagreement regarding the proposed Rule 11 agreement memorializing your request for an extension of the date for designation of experts. In short, and as I have previously said, I am willing to agree to your request for an extension. I am not, however, willing to agree, infer or otherwise indicate, state, condition or provide a reason for why you want the extension. The reasons why you have requested an extension are yours, not mine, and not relevant to my agreement to your request for the extension. It is that simple. Once again, if you will provide me with a basic Rule 11 which reflects the extended dates, I will sign it.

Very truly yours,



Cyndi M. Benedict

CMB/cai

cc: Ms. Malinda A. Gaul
Law Offices of Gaul and Dumont
111 Soledad, Suite 725
San Antonio, Texas 78205

APP 0015

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE.
SUITE 200
DALLAS, TEXAS 75204
DALLAS: (214) 720-2009
METRO: (972) 988-3357
FAX: (214) 720-2291
866 302 LEGAL

FILE COPY

Hal K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drazin
Joseph H. Gillespie
Karla S. Jackson
Christopher L. Green
M. Jeanette Fedele
James D. Sanford

February 17, 2006

Via Facsimile - (210) 270-7205

* Board Certified Labor and Employment Law
Texas Board of Legal Specialization

Cynthia M. Benedict
Fulbright & Jaworski
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

**Re: *Lauren Browning vs. Southwest Research Institute*
*Civil Action No. SA-05-CA-0245-XR***

Dear Ms. Benedict:

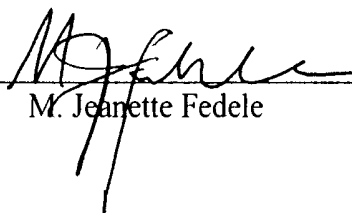
It is my understanding that you are agreeable to moving Plaintiff's deadline to designate testifying experts to March 17, 2006, and Defendant's deadline for same to April 17, 2006.

If this matches your understanding of our agreement, please indicate by your signature below.

Thank you for your courtesies.

Very truly yours,

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

By: 
M. Jeanette Fedele

MJF:ps

AGREED TO:

Cynthia M. Benedict

APP 0016

Cynthia M. Benedict
February 17, 2006
Page Two

cc: Hal K. Gillespie

Steve Baughman Jensen (Via E-Mail)
Adele P. Kimmel (Via E-Mail)
Malinda A. Gaul (Via E-Mail)

Confirmation Report - Memory Send

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End time : Feb-17 16:39
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A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE.
SUITE 200
DALLAS, TEXAS 75204

DALLAS: (214) 720-2009
METRO: (972) 988-3357
FAX: (214) 720-2291

Of Counsel
G. William Baab

Hal K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drizin
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FAX COVER SHEET

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FULBRIGHT & JAWORSKI
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

Fax: 210.270.7205

FROM: Jeanette Fedele

Date: February 17, 2006

RE: *Browning v. Southwest Research Institute*

Our File No. 05-075

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER PAGE: 3

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APP 0018

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE
SUITE 200
DALLAS, TEXAS 75204

DALLAS: (214) 720-2009
METRO: (972) 988-3357
FAX: (214) 720-2291
866 302 LEGAL

February 21, 2006

Hal K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drazin
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Texas Board of Legal Specialization

Via Facsimile - (210) 270-7205

Cynthia M. Benedict
Fulbright & Jaworski
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

**Re: *Lauren Browning vs. Southwest Research Institute*
*Civil Action No. SA-05-CA-0245-XR***

Dear Ms. Benedict:

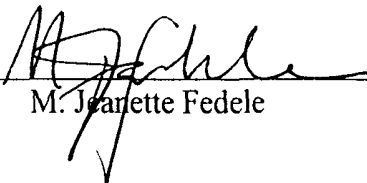
Last week we discussed extending Plaintiff's deadline to designate testifying experts to March 17, 2006, and extending Defendant's deadline for same to April 17, 2006. By your letter of February 17, 2006 (your file number FAX-FEB0303), you indicated that once I provided a basic letter agreement which reflects the extended dates, you would sign it.

I faxed such a letter agreement on February 17, 2006, but have not heard back from you. Attached is a copy of my February 17, 2006 letter. Please sign it and return by facsimile as soon as possible. If you do not intend to sign it, please let me know immediately.

Thank you for your prompt attention to this matter.

Very truly yours,

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

By: 
M. Jeanette Fedele

MJF:ps
Attachment

cc: Hal K. Gillespie

Steve Baughman Jensen (Via E-Mail)
Adele P. Kimmel (Via E-Mail)
Malinda A. Gaul (Via E-Mail)

APP 0019

LAW OFFICES OF

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE
SUITE 200
DALLAS, TEXAS 75204
DALLAS: (214) 720-2009
METRO (972) 988-3357
FAX (214) 720-2291
866 302 LEGAL

Hal K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drazin
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Karla S. Jackson
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M. Jeanette Fedele
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February 17, 2006

Via Facsimile - (210) 270-7205

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Texas Board of Legal Specialization

Cynthia M. Benedict
Fulbright & Jaworski
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

***Re: Lauren Browning vs. Southwest Research Institute
Civil Action No. SA-05-CA-0245-XR***

Dear Ms. Benedict:

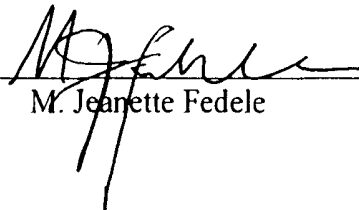
It is my understanding that you are agreeable to moving Plaintiff's deadline to designate testifying experts to March 17, 2006, and Defendant's deadline for same to April 17, 2006.

If this matches your understanding of our agreement, please indicate by your signature below.

Thank you for your courtesies.

Very truly yours,

GILLESPIE, ROZEN, WATSKY, MOTLEY & JONES, P.C.

By: 
M. Jeanette Fedele

MJF:ps

AGREED TO:

Cynthia M. Benedict

APP 0020

Cynthia M. Benedict
February 17, 2006
Page Two

cc: Hal K. Gillespie

Steve Baughman Jensen (Via E-Mail)
Adele P. Kimmel (Via E-Mail)
Malinda A. Gaul (Via E-Mail)

Confirmation Report - Memory Send

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Date & Time: Feb-21-06 12:04
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Machine ID : GRWM Law Firm

Job number : 467
Date : Feb-21 12:03
To : 12102707205---05075
Number of pages : 004
Start time : Feb-21 12:03
End time : Feb-21 12:04
Pages sent : 004
Status : OK

Job number : 467

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A TEXAS PROFESSIONAL CORPORATION

3402 OAK GROVE AVE.
SUITE 200
DALLAS, TEXAS 75204

DALLAS: (214) 720-2009
METRO: (972) 988-3357
FAX: (214) 720-2291

Of Counsel
G. William Beebe

Hel K. Gillespie*
Yona Rozen*
David K. Watsky*
Susan D. Motley*
James A. Jones
Cheryl R. Drazin
Joseph H. Gillespie
Karl S. Jackson
Christopher L. Green
M. Jeannette Fedele
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Texas Board of Legal Specialization

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TO: Cynthia M. Benedict
FULBRIGHT & JAWORSKI
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792

Fax: 210.270.7205
05-075

FROM: Jeanette Fedele

Date: February 21, 2006

RE: *Browning v. Southwest Research Institute*

Our File No. 05-075

TOTAL NUMBER OF PAGES, INCLUDING THIS COVER PAGE: 4

MESSAGE:

If you are not receiving this message clearly, or if you have any problems, please call our office immediately at 214-720-2009.

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APP 0022

**CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

NOTICE

Browning
Plaintiff(s)

§

§

CASE NO. SANCA245

Southwest Research
Defendant(s)

§

The following material has been filed and assigned these numbers on the docket sheet:

Number(s) assigned:	Material	Filing Date
_____	Deposition(s)	_____
_____	Transcripts	_____
_____	Bulky Pleadings	_____
_____	Exhibits	_____
<u>exh.</u>	Sealed Material	_____

**THIS NOTICE IS PLACED IN THE FILE
JACKET TO ACCOUNT FOR NUMBERS ASSIGNED
TO MATERIAL FILED IN THIS CASE BUT
NOT FILED IN THE CASE JACKET**

Exh.